IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL (L) NO.1118 OF 2003.
WITH
NOTICE OF MOTION No.3369/2003.

The Commissioner of Income-tax
Mumbai City 7, Mumbai. Appellant.

V/s.

M/s. Vitessee Trading Ltd.
Mumbai. ... Respondent.

Mr Ashok Kotangale with P.S. Sahadevan for the Appellant.

CORAM : DR.S.RADHAKRISHNAN and V.C.DAGA, JJ.

DATED : 23rd April 2007.

P.C. :
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1. Heard the learned counsel for the appellant. Perused petition. 2. We, during the course of exercising our appellate jurisdiction under Section 260-A of the Income-tax Act, 1961, (for short the "Act") noticed that in a quite few matters in spite of the Circulars of the C.B.D.T. (Ministry of Finance Department); one of them being dated 24th October, 2005; (which clearly stipulates that the Income-tax Department should not file appeals under Section 260-A of the Act, wherein the tax effect is less than Rs. 4 lacs), the Department is filing appeals without following the guide-lines laid down in

the said Circular.

3. At this juncture, it will also be relevant to note that through our two judgments; in the case of **Commissioner of Income-tax Vs.Camco Colour Co., 2002 ITR 565 and another in case of Commissioner of Income-tax Vs. Pithwa Engg. Works, 2005 ITR 519,** it is categorically ruled that the Circulars issued by the C.B.D.T., from time to time, are binding on the Income-tax Department; since they have a statutory force. The said judgments clearly lay down that the Department is not expected to file appeals; wherein the tax effect is less than Rs. 2 lacs, now revised to Rs. 4 lacs.

4. In view of the Circulars of the C.B.D.T. and our judgments referred to hereinabove, we expect from the Income-tax Department that wherever tax effect is less than the limit prescribed in the Circulars issued by the C.B.D.T., Department should not file appeal or reference and should proceed to withdraw the same, if already filed, so that proportionate court fee can be refunded to the Department.

5. Since we have noticed that the

guide-lines issued in the Circular by the C.B.D.T. and the law laid down by this Court is being followed in breach by the Department, we are constrained to direct the Commissioner of Income-tax No.VII, Mumbai City, Mumbai, who is personally present in the Court pursuant to our notice, to move the C.B.D.T. with a request to issue appropriate Circular in this behalf to all the Chief Commissioners of Income-tax Department operating in the region directing them to instruct their respective Advocates to withdraw pending appeals; wherein the tax effect is less than Rs. 4 lacs, unless the question of law involved or raised in the appeal or referred to this Court is of a recurring nature, required to be settled by this Court.

6. In the case at hand, since the Commissioner of Income-tax has already filed affidavit tendering apology and has moved a motion to seek withdrawal of the instant appeal, we do not propose to pursue the matter further. Show cause notice stands discharged.

7. However, this matter shall appear on board after four weeks to ensure compliance of this order with regard to the implementation of the Circular issued by the C.B.D.T. and the law laid down by this Court in the cases referred hereinabove.

8. Needless to mention that in view of the withdrawal of the appeal, Notice of Motion does not survive. The revenue shall be entitled to refund of the proportionate court fee as per rules.

9. No order as to costs.

10. Stand over after four weeks.

(V.C.DAGA, J.) **(DR.S.RADHAKRISHNAN, J.)**